

Remarks:

The present amendment is in response to the office action dated April 7, 2005 in the above-identified patent application.

In the office action, claims 1-42 were pending, with claims 1, 3 – 8, 10 – 19, 22 – 31, 33 - 40 remaining in this application, with claims 1, 10, 13, 16, 18, 33, 36, 39 having been amended, and claims 2, 9, 20, 21, 32, 41, and 42 having been cancelled.

Summary of Examiner rejections and Applicant responses

Claims 1-42 were pending and were made subject to a restriction requirement. Under 35 U.S.C. 121, in the office action on page 2, the Examiner identified:

1. Claims 1-40 as drawn to a structural brace apparatus, classified in class 403, subclass 403.
2. Claims 41 and 42 as drawn to a method of installing a structural brace apparatus, classified in class 52, subclass 741.1.

Applicant accepts the restriction requirement with respect to group 1 as representing the apparatus claims 1-40 and group 2 as representing method claims 41 and 42 being patentably distinct groupings.

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Applicant elects to pursue group 1 including claims 1-40, with the Applicant withdrawing group 2 claims 41 and 42 from consideration, subject to filing a subsequent divisional application for group 2 claims 41 and 42, confirming the telephone election by Roger A. Jackson to the Examiner on March 23, 2005. Thus, in response claims 41 and 42 are cancelled.

Also, in the office action on page 2, the Examiner objected to the disclosure text as the font size was not normal and bolded.

In response, the Applicant is not sure how this objection occurred as the present application was electronically filed wherein the font size and bolding are controlled by the USPTO software at the time which was PASAT, the Applicant's printed out copy of the application from IE appeared normal.

Further in the office action on page 3, the Examiner objected to claims 16 and 39 and requested that the Applicant remove the extra phrase "to the".

In response, claims 16 and 39 are amended.

In the office action page 3, the Examiner stated that claims 1-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the Examiner stated that independent claims 1 and 18 set forth a structural brace apparatus and that the dependent claims 16, 17, 39, and 40 cited "wherein said first support arm is secured to the primary building", "wherein said second support arm is secured to the secondary building", respectively, resulting in claim language that is unclear

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and inconsistent. Thus, the Examiner is treating the claims as a sub combination to a structural brace, with the building structures not positively claimed.

In response, Applicant accepts the building structures as not being positively claimed and the claims being treated as a sub combination to a structural brace. The primary building component and the secondary building component are interfaces to the applicant's invention and do not form a part of the claimed invention.

The Examiner stated that in regard to claim 9 recited is the limitation "wherein said intermediate angle is about 45 degrees" has insufficient antecedent basis from claim 1.

In response, claim 1 is amended to more clearly define that the intermediate angle is taken between the first support arm longitudinal axis position to the primary building component X axis deflection with antecedent support shown as element 40 in Figure 5 and in the description paragraph 40. As claim 9 depends from claim 1, claim 9 should now overcome this rejection. The Examiner should note that the claim 9 limitations are actually incorporated into claim 1, resulting in claim 9 being cancelled in response to the substantive prior art rejections under 35 U.S.C. 102 and 103.

Further, the Examiner stated that is regards to claim 10 the limitation called "a base attachment member" appeared to be the same as the limitation in claim 6 and had asked for clarification.

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In response, the claim 10 limitation is for a single base attachment member 34 oriented at about 45 degrees as best shown in Figures 1, 2, and 3, wherein the claim 6 limitation is for a pair of base attachment members 34 as best shown in Figure 6.

Turning to the rejections over the prior art the in the office action on page 4 the Examiner rejected claims 1-8, 16-31, 34-35, and 37-40 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,213,679 to Frobosilo et al. The Examiner states that in regards to claims 1, 16-19, 39, 40 that Frobosilo teaches a device having a first support arm 90 extending from a second support arm 12 having a slidable engagement with the first support arm 90 (Figure 6) that is made from steel material (column 4, line 20) and since Frobosilo teaches similar structure as the Applicant's claimed invention and is inherently capable of similar functions.

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled.

Further, in regard to claim 2 the Examiner stated that Frobosilo teaches a slidable engagement with a retainer 98/100 to prevent axial disengagement.

In response, claims 1, 10, and 13 are amended and claims 2 and 9 are cancelled.

The Examiner also stated that in regards to claims 3, 4, 26, and 27 Frobosilo teaches a base attachment member 20 adjacent to the second support arm opposite of the slidable engagement.

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In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled.

The Examiner also stated that in regards to claims 5, 28, 34, and 35 Frobosilo teaches a base attachment member 20 integral and affixed to the second support arm.

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled.

The Examiner also stated that in regards to claims 6 and 29 Frobosilo teaches a pair of base attachment members 94/96 adjacent to the first support arm opposite of the slidable engagement and second support arm opposite of the slidable engagement.

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled.

The Examiner also stated that in regards to claims 7, 30, 31, 37, and 38 Frobosilo teaches a pair of base attachment members 94/96 that are integral and affixed to the first and second support arms when they are engaged together (Figure 6).

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled.

The Examiner also stated that in regards to claim 8 Frobosilo teaches a pair of base attachment members 94/96 are integral to the first and second support arms when they are engaged to each other.

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In response, claims 1, 10, and 13 are amended and claims 2 and 9 are cancelled.

The Examiner also stated that in regards to claims 20, 22, 24 and 25 Frobosilo teaches a slidable engagement constructed of a pair of inwardly extending fingers 98/100 such that at least one finger extends from the first support arm edge margin and slidably engages the second support arm and the third and forth edge margins.

In response, claims 18, 33, and 36 are amended and claims 20, 21, and 32 are cancelled.

The Examiner also stated that in regards to claims 21 and 23 Frobosilo teaches a plurality of fingers 98/100 contact from the first support arm and second support arm such that a retainer is created to prevent disengaging from one another (Figure6).

In response, claims 18, 33, and 36 are amended and claims 20, 21, and 32 are cancelled.

In the office action on page 6 the Examiner rejected claims 9-15, 32, 33 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,213,679 to Frobosilo, as Frobosilo teaches the claimed invention except for a base attachment member oriented at about 45 degrees from either the first or second support arm opposite the slidable engagement and that it would have been ordinary skill in the art to optimize the angle range of general conditions disclosed in the prior art.

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In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled.

Detailed explanation of reference teachings and amendment remarks

A 35 U.S.C. 102(b) rejection requires complete claim anticipation by a single reference, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Also, "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Plus, the elements must be arranged as required in the claim, however, identical terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Frobosilo teaches a right angled side clip that can accommodate vertical movement of a metal stud relative to a main structure and seismically induced horizontal movement (only in case of emergency) in the same plane as the vertical movement, with the movement of the metal stud relative to the main structure through the use of two slip joints, one for the vertical movement and one for the horizontal movement. The vertical movement slip joint is in a planar member 20 that includes a slotted aperture 26 wherein a plate member 14 has a central recessed surface 44 that fits within aperture 26 and through the use of

fasteners 48 attaching through surface 44 to the metal stud allowing for vertical misalignment of the metal stud at installation and to allow for vertical movement between the metal stud and the main structure (column 2, lines 34 - 67 to column 3, lines 1 – 9, and Figures 2, 3, 5, and 6). For the seismic event induced horizontal movement a bracket member 90 having a web portion 92 and flange portions 94 and 96 that slidably receive planar member 24 having no slidable axis retention in the free state (column 3, lines 40 – 62, Figure 5). In addition bracket member 90 also has aperture 104 that is aligned with aperture 28b in angle member 12 when the angle member 12 is slidably received in bracket member 90, wherein a shear pin 106 is frictionally positioned through apertures 28b and 104 thus completely securing or preventing any relative horizontal movement between bracket member 90 and angle member 12, resulting in no horizontal movement until the shear pin 106 is severed (due to a seismic event) (column 3, lines 63 – 67 to column 4, lines 1 – 16). However, once the shear pin 106 is severed, horizontal movement between the angle 12 and bracket member 90 is unbounded potentially leading to a hazardous situation of no horizontal retention between the metal stud and the main structure as observed from Figure 6. Thus, horizontal movement is normally desirably fixed from the shear pin 106 and as evidenced by the addition of stiffeners 30 and 32 to the angle member 12 to further resist any horizontal movement between the metal stud and the main structure (column 2, lines 45 – 49, Figure 1). In addition, in looking at the design of the interface of the angle 12 and bracket member 90 for the horizontal

movement through the slidable engagement between the bracket member 90 and the planar member 24 there would not be a predictable slidable engagement as the seismically induced horizontal movement (once the shear pin 106 is severed) of the metal stud only (as the main structure is assumed to be stable and not have horizontal movement (column 4, lines 10 – 14)) there is created a moment at the angle formed between planar member 20 and planar member 24 through the horizontal force at fastener 48 acting through the moment arm from fastener 48 to the angle between member 20 and member 24 (Figure 6). This results in member 24 being rotated within member 90 such that lip members 34 and 36 have a point or corner contact against lips 98 and 100 when attempting horizontal movement within the slidable engagement of member 24 to member 90 that has an unpredictable amount of friction of the aforementioned slidable engagement, thus the higher the horizontal force at the metal stud results in a harder aforementioned point or corner contact increasing friction and resistance of the slidable engagement. Thus as the horizontal force at the metal stud increases, the slidable engagement has higher friction and further resists horizontal movement between the member 12 and member 90, meaning that when horizontal movement is needed most the horizontal movement is resisted the most. In summary, Frobosilo teaches only vertical movement of the metal stud to the main structure and is designed to be horizontally fixed between the metal stud and the main structure as evidenced by the shear pin 106 and the horizontal stiffeners 30 and 32, and if the shear pin 106 is severed by a seismic

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event not only is the freedom of horizontal movement unpredictable but should horizontal movement occur it is unlimited i.e. not retained resulting in a potentially hazardous situation of the metal stud being unbounded horizontally in the case of a seismic event.

Turning to the rejections over the prior art the in the office action on page 4 the Examiner rejected claims 1-8, 16-31, 34-35, and 37-40 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,213,679 to Frobosilo. The Examiner states that in regards to claims 1, 16-19, 39, 40 that Frobosilo teaches a device having a first support arm 90 extending from a second support arm 12 having a slidable engagement with the first support arm 90 (Figure 6) that is made from steel material (column 4, line 20) and since Frobosilo teaches similar structure as the Applicant's claimed invention and is inherently capable of similar functions.

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled. Claim 1 was amended to incorporate the limitations of claim 2 and 9, resulting in claim dependency amendments to claim 10 and 13. This results in claim 1 having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach.

Further, in regard to claim 2 the Examiner stated that Frobosilo teaches a slidable engagement with a retainer 98/100 to prevent axial disengagement.

In response, claims 1, 10, and 13 are amended and claims 2 and 9 are cancelled. Claim 1 was amended to incorporate the limitations of claim 2 and 9, resulting in claim dependency amendments to claim 10 and 13. This results in claim 1 having the limitation of the retention of axial movement of the slidable engagement along the longitudinal axis between the first support arm and the second support arm. Frobosilo's elements 98/100 do not retain axial movement between bracket members 90 and 12, as elements 98/100 only provide for a channeled slidable engagement to lip members 34 and 36, however, there is no retention of the slidable engagement or reciprocative movement unless the shear pin 106 is put into place in which case there is no reciprocative movement, thus Frobosilo does not teach reciprocative movement in combination with a retention of axial movement along the slidable engagement, as with Frobosilo either there is no reciprocative movement (with shear pin 106 in place) or once the shear pin is severed there is no retention of the reciprocative movement.

The Examiner also stated that in regards to claims 3, 4, 26, and 27 Frobosilo teaches a base attachment member 20 adjacent to the second support arm opposite of the slidable engagement.

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled. As independent claims 1 and 18 have been amended to having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach and having the limitation of the retention of axial

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movement (reciprocative movement) of the slidable engagement along the longitudinal axis between the first support arm and the second support arm which Frobosilo does not teach and as claims 3 and 4 depend from claim 1, and claims 26 and 27 depend from claim 18, this rejection should be overcome.

The Examiner also stated that in regards to claims 5, 28, 34, and 35 Frobosilo teaches a base attachment member 20 integral and affixed to the second support arm.

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled. As independent claims 1 and 18 have been amended to having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach and having the limitation of the retention of axial movement (reciprocative movement) of the slidable engagement along the longitudinal axis between the first support arm and the second support arm which Frobosilo does not teach and as claim 5 depends from claim 1, and claims 28, 34, and 35 depend from claim 18, this rejection should be overcome.

The Examiner also stated that in regards to claims 6 and 29 Frobosilo teaches a pair of base attachment members 94/96 adjacent to the first support arm opposite of the slidable engagement and second support arm opposite of the slidable engagement.

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled. As independent claims 1 and 18 have been

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amended to having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach and having the limitation of the retention of axial movement (reciprocative movement) of the slidable engagement along the longitudinal axis between the first support arm and the second support arm which Frobosilo does not teach and as claim 6 depends from claim 1, and as claim 29 depends from claim 18, this rejection should be overcome.

The Examiner also stated that in regards to claims 7, 30, 31, 37, and 38 Frobosilo teaches a pair of base attachment members 94/96 that are integral and affixed to the first and second support arms when they are engaged together (Figure 6).

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled. As independent claims 1 and 18 have been amended to having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach and having the limitation of the retention of axial movement (reciprocative movement) of the slidable engagement along the longitudinal axis between the first support arm and the second support arm which Frobosilo does not teach and as claim 7 depends from claim 1, and claims 30, 31, 37, and 38 all depend from claim 18, this rejection should be overcome.

The Examiner also stated that in regards to claim 8 Frobosilo teaches a pair of base attachment members 94/96 are integral to the first and second support arms when they are engaged to each other.

In response, claims 1, 10, and 13 are amended and claims 2 and 9 are cancelled. As independent claim 1 has been amended to having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach and having the limitation of the retention of axial movement (reciprocative movement) of the slidable engagement along the longitudinal axis between the first support arm and the second support arm which Frobosilo does not teach and as claim 8 depends from claim 1, this rejection should be overcome.

The Examiner also stated that in regards to claims 20, 22, 24 and 25 Frobosilo teaches a slidable engagement constructed of a pair of inwardly extending fingers 98/100 such that at least one finger extends from the first support arm edge margin and slidably engages the second support arm and the third and forth edge margins.

In response, claims 18, 33, and 36 are amended and claims 20, 21, and 32 are cancelled. As independent claim 18 has been amended to having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach and having the limitation of the retention of axial movement (reciprocative movement) of the slidable engagement along the longitudinal axis between the

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first support arm and the second support arm by way of the limitation of fingers that retain axial (reciprocative) movement preventing axial disengagement which Frobosilo does not teach. Frobosilo's elements 98/100 do not retain axial movement between bracket members 90 and 12, as elements 98/100 only provide for a channeled slidable engagement to lip members 34 and 36, however, there is no retention of the slidable engagement or reciprocative movement unless the shear pin 106 is put into place in which case there is no reciprocative movement, thus Frobosilo does not teach reciprocative movement in combination with a retention of axial movement along the slidable engagement, as with Frobosilo either there is no reciprocative movement (with shear pin 106 in place) or once the shear pin is severed there is no retention of the reciprocative movement. As claims 22, 24, and 25 all depend from claim 18, this rejection should be overcome.

The Examiner also stated that in regards to claims 21 and 23 Frobosilo teaches a plurality of fingers 98/100 contact from the first support arm and second support arm such that a retainer is created to prevent disengaging from one another (Figure6).

In response, claims 18, 33, and 36 are amended and claims 20, 21, and 32 are cancelled. As independent claim 18 has been amended to having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach and having the limitation of the retention of axial movement (reciprocative movement)

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of the slidable engagement along the longitudinal axis between the first support arm and the second support arm by way of the limitation of fingers that retain axial (reciprocative) movement preventing axial disengagement which Frobosilo does not teach. Frobosilo's elements 98/100 do not retain axial movement between bracket members 90 and 12, as elements 98/100 only provide for a channeled slidable engagement to lip members 34 and 36, however, there is no retention of the slidable engagement or reciprocative movement unless the shear pin 106 is put into place in which case there is no reciprocative movement, thus Frobosilo does not teach reciprocative movement in combination with a retention of axial movement along the slidable engagement, as with Frobosilo either there is no reciprocative movement (with shear pin 106 in place) or once the shear pin is severed there is no retention of the reciprocative movement. As claim 23 depends from claim 18, this rejection should be overcome.

In the office action on page 6 the Examiner rejected claims 9-15, 32, 33 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,213,679 to Frobosilo, as Frobosilo teaches the claimed invention except for a base attachment member oriented at about 45 degrees from either the first or second support arm opposite the slidable engagement and that it would have been ordinary skill in the art to optimize the angle range of general conditions disclosed in the prior art.

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled.

In establishing a prima facie case of obviousness under 35 U.S.C. 103 it is incumbent upon the Examiner to provide a reason why one of ordinary skill in the art would have been lead to modify a prior art reference or to combine reference teachings to arrive at the claimed invention. See *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985). To this end, the requisite motivation must stem from some teaching, suggestion or inference in the prior art as a whole or from the knowledge generally available to one of ordinary skill in the art and not from the Applicant's disclosure. See, e.g., *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1052, 5 USPQ2d 1434 (Fed. Cir. 1991) (The teaching or suggestion to make the claimed combination must not be based on the Applicant's disclosure). For a proper rejection under 35 U.S.C. 103 all of the claim limitations must be taught or suggested by the prior art. In *re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); In *re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) ("All words in a claim must be considered in judging patentability of that claim against the prior art."). Obviousness under 35 U.S.C. 103 can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In *re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); In *re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1998). The proposed modification for combining or individually modifying the prior art references cannot change the principal of

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operation of the references, if the principal of operation of the references is changed, then the teachings of the references are not sufficient to render the claim prima facie obvious. In re Ratti, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). The motivation to modify the reference should manifest in some advantage or beneficial result, In re Sernaker, 702 F.2d 989, 994-95, 217 USPQ 1, 5-6 (Fed. Cir. 1983). Further, it should be noted that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); MPEP §2143.03.

In the office action on page 6 the Examiner rejected claims 9-15, 32, 33 under 36 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,213,679 to Frobosilo, as Frobosilo teaches the claimed invention except for a base attachment member oriented at about 45 degrees from either the first or second support arm opposite the slidable engagement and that it would have been ordinary skill in the art to optimize the angle range of general conditions disclosed in the prior art.

In response, claims 1, 10, 13, 18, 33, and 36 are amended and claims 2, 9, 20, 21, and 32 are cancelled. As independent claim 1 has been amended to having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach (as the Examiner states in the 35 U.S.C. 103 rejection) and claim 1 is also amended to have the limitation of the retention of axial movement

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(reciprocative movement) of the slidable engagement along the longitudinal axis between the first support arm and the second support arm which Frobosilo does not teach, nor does Frobosilo teach the combination of first support arm longitudinal axis positioned at about forty five degrees to the metal stud vertical (X axis) movement to accommodate both vertical (X axis) and horizontal (Y axis) movement of the metal stud with both the X and Y axis movement retained as to the amount of X and Y axis movement and as claims 10 – 15 all depend from amended claim 1, this rejection should be overcome. Also, as independent claim 18 has been amended to having the first support arm longitudinal axis positioned at about forty five degrees to the primary building component X axis deflection of which Frobosilo does not teach (as the Examiner states in the 35 U.S.C. 103 rejection) and having the limitation of the retention of axial movement (reciprocative movement) of the slidable engagement along the longitudinal axis between the first support arm and the second support arm by way of the limitation of fingers that retain axial (reciprocative) movement preventing axial disengagement of which Frobosilo does not teach. Frobosilo's elements 98/100 do not retain axial movement between bracket members 90 and 12, as elements 98/100 only provide for a channeled slidable engagement to lip members 34 and 36, however, there is no retention of the slidable engagement or reciprocative movement unless the shear pin 106 is put into place in which case there is no reciprocative movement, thus Frobosilo does not teach reciprocative movement in combination with a retention of axial movement along the slidable

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engagement, as with Frobosilo either there is no reciprocative movement (with shear pin 106 in place) or once the shear pin 106 is severed there is no axial (along the longitudinal axis) retention of the reciprocative movement horizontally (X axis). As claims 32, 33, and 36 all depend from claim 18, this rejection should be overcome. The Examiner also stated that it would be ordinary skill in the art to optimize a working range within general conditions that are disclosed within the prior art, alluding to the base attachment member being oriented at about forty five degrees. However, when the base attachment angle selection of about forty five degrees results in a new functional benefit of the Applicant's structural brace not taught by the prior art then it is not ordinary skill in the art, as Applicant's structural brace can accommodate horizontal (X axis) and vertical (Y axis) movement or deflections that are retained in combination through first and second support arms oriented at about forty five degrees to the X axis deflection through a single reciprocative movement retained slidable engagement (as limited in amended claims 1 and 18) of which Frobosilo can only accommodate a single vertical (Y axis) deflection that is retained and if the shear pin 106 is severed there is no retention of horizontal (X axis) movement. Frobosilo teaches horizontal (X axis) fixed rigid attachment as evidenced by the shear pin 106 and the stiffeners 30 and 32 and if Frobosilo were modified to accommodate retained horizontal (X axis) and vertical (Y axis) movement in combination to match the Applicant's structural brace, Frobosilo's principal of operation would be

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changed, thus Frobosilo impliedly teaches away from horizontal (X axis) movement accommodation that is retained.

Applicant respectfully requests that a timely notice of allowance be issued in this case.

Respectfully submitted,

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CERTIFICATE OF MAILING UNDER 37 C.F.R §1.8

I hereby certify that the attached **TRANSMITTAL OF RESONSE TO OFFICE ACTION DATED APRIL 7, 2005 AND RETURN RECIEPT POST CARD** is being deposited with the United States Postal Service as prepaid first class mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 7th day of August, 2005.



Roger A. Jackson